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FILED

JUL 17 2018

DEPARTMENT OF REAL ESTATE

By K. Knapp

9 BEFORE THE BUREAU OF REAL ESTATE

10 STATE OF CALIFORNIA

11 * * *

12 In the Matter of the Accusation of)

13 DONNA J. SCHWARZBACH,)

14 Respondent.)

No. H-12254 SF

ACCUSATION

15 The Complainant, ROBIN S. TANNER, a Supervising Special Investigator of the
16 State of California, for cause of Accusation against DONNA J. SCHWARZBACH (Respondent),
17 is informed and alleges as follows:

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19 The Complainant, ROBIN S. TANNER, a Supervising Special Investigator of the
20 State of California, makes this Accusation in her official capacity.

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22 Respondent is presently licensed and/or has license rights under the Real Estate
23 Law, Part 1 of Division 4 of the Business and Professions Code (Code).

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25 At all times mentioned, Respondent was and is licensed by the Bureau as a real
26 estate broker.

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At all times mentioned, Respondent engaged in the business of, acted in the capacity of, advertised, or assumed to act as a real estate broker within the State of California within the meaning of Sections 10131(b) of the Code, including the operation and conduct of a property management business with the public wherein, on behalf of others, for compensation or in expectation of compensation, Respondent leased or rented and offered to lease or rent, and solicited for prospective tenants of real property or improvements thereon, and collected rents from real property or improvements thereon.

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On or about July 26, 2017 through July 27, 2017, an audit was conducted of the records of Respondent. The auditor herein examined the records for the period of July 1, 2016, through June 30, 2017.

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While acting as a real estate broker as described in Paragraph 5, Respondent accepted or received funds in trust (trust funds) from or on behalf of owners and tenants in connection with the leasing, renting, and collection of rents on real property or improvements thereon, as alleged herein, and thereafter from time-to-time made disbursements of said trust funds.

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The trust funds accepted or received by Respondent as described in Paragraph 5 were deposited or caused to be deposited by Respondent into trust accounts which were maintained by Respondent for the handling of trust funds, and thereafter from time-to-time Respondent made disbursements of said trust funds, identified as follows:

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ACCOUNT # 1	
Bank Name and Location:	Liberty Bank 500 Linden Avenue South San Francisco, CA 94080
Account No.:	XXX1332
Entitled:	Blackbrook Associates

ACCOUNT # 2	
Bank Name and Location:	Liberty Bank 500 Linden Avenue South San Francisco, CA 94080
Account No.:	XXX8404
Entitled:	Blackbrook Associate ATF: 10719 Lonita Unit A – Lalk Aaron

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In the course of the activities described in Paragraph 5, Respondent:

(a) Caused, suffered, or permitted the balance of funds in Account #1 to be reduced to an amount which, as of June 30, 2017, was approximately \$12,144.87 less than the aggregate liability of Account #1 to all owners of such funds in violation of Section 10145 of the Code and Section 2832.1 of Title 10 of the California Code of Regulations (Regulations).

(b) Caused, suffered, or permitted the balance of funds in Account #2 to be reduced to an amount which, as of June 30, 2017, was approximately \$5.10 less than the aggregate liability of Account #2 to all owners of such funds in violation of Section 10145 of the Code and Section 2832.1 of Title 10 of Regulations.

(c) failed to maintain a written control record, for Account #2, of all trust funds received and disbursed, containing all information required by Section 2831 of the Regulations;

1 (d) failed to deposit trust funds into one or more trust fund accounts in the
2 name of Respondent as trustee at a bank or other financial institution, in conformance with
3 Section 10145 of the Code and Section 2832 of the Regulations;

4 (e) caused, permitted, and/or allowed, the possible withdrawal of trust funds
5 from Accounts # 1 and 2 by a person, Russell Edward Gross, who was not a broker who had
6 entered into a written agreement with Respondent in violation of Section 2834 of the
7 Regulations; and

8 (f) failed to disclose license identification number(s) on Respondent's
9 website, <http://www.blackbrookassociates.com>, in violation of Section 10140.6(b) of the
10 Code and Section 2773 of the Regulations.

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12 The acts and/or omissions of Respondent as alleged above constitute grounds for
13 the suspension or revocation of all licenses and license rights of Respondent, pursuant to the
14 following provisions of the Code and Regulations:

15 As to Paragraphs 8(a) and 8(b), under Sections 10177(d) and/or 10177(g) of the
16 Code in conjunction with Section 10145 of the Code and Section 2832.1 of the Regulations;

17 As to Paragraph 8(c), under Sections 10177(d) and/or 10177(g) of the Code in
18 conjunction with Section 2831 of the Regulations;

19 As to Paragraph 8(d), under Sections 10177(d) and/or 10177(g) of the Code in
20 conjunction with Section 10145 of the Code and Section 2832 of the Regulations;

21 As to Paragraph 8(e), under Sections 10177(d) and/or 10177(g) of the Code in
22 conjunction with Section 10145 of the Code and Section 2834 of the Regulations;

23 As to Paragraph 8(f), under Sections 10177(d) and/or 10177(g) of the Code in
24 conjunction with Section 10140.6(b) of the Code and Section 2773 of the Regulations.

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1 COST RECOVERY

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3 The acts and/or omissions of Respondent as alleged above, entitle the Bureau to
4 reimbursement of the costs of its audit pursuant to Section 10148(b) (audit costs for trust fund
5 handling violation) of the Code.

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7 Section 10106 of the Code provides, in pertinent part, that in any order issued in
8 resolution of a disciplinary proceeding before the Bureau, the Commissioner may request the
9 Administrative Law Judge to direct a licensee found to have committed a violation of this part to
10 pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

11 WHEREFORE, Complainant prays that a hearing be conducted on the allegations
12 of this Accusation and that upon proof thereof, a decision be rendered imposing disciplinary
13 action against all licenses and license rights of Respondent under the Code, for the cost of
14 investigation and enforcement as permitted by law, for the cost of the audit, and for such other
15 and further relief as may be proper under other provisions of law.

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18 ROBIN S. TANNER
19 Supervising Special Investigator

20 Dated at Oakland, California,
21 this 5th day of July, 2018

22 DISCOVERY DEMAND

23 Pursuant to Sections 11507.6, *et seq.* of the *Government Code*, the Bureau of Real Estate hereby
24 makes demand for discovery pursuant to the guidelines set forth in the *Administrative Procedure*
25 *Act*. Failure to provide Discovery to the Bureau of Real Estate may result in the exclusion of
26 witnesses and documents at the hearing or other sanctions that the Office of Administrative
27 Hearings deems appropriate.